Commissioner of Central Excise Vs. Rajpack Well Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-24-1999

Reported in : (1999)(113)ELT169TriDel

Appellant : Commissioner of Central Excise

Respondent : Rajpack Well Ltd.

Judgement :

1. These are 3 appeals arising out of the common order passed by the Commissioner (Appeals), Indore involving the issue whether the doctrine of unjust enrichment applies in the case of refund of duty paid on goods captively consumed.

2. When the matter was called, no one was present on behalf of the respondents in spite of notice. We, therefore heard Shri H.K. Jain, learned SDR, in Appeal No. E/1212/96-C and Shri K. Panchatcharam, learned JDR, in other two appeals. They submitted that the respondents were manufacturing HOPE tapes which were captively consumed by them in the manufacture of HDPE sacks. They had sought refund of duty paid on HDPE tapes which was sanctioned by the Asstt. Commissioner. After the review by the Collector, the appeals were filed before the Collector (Appeals) who also in the impugned order rejected the department's appeal following the decision of the Bombay High Court in the case of Solar Pesticides (P) Ltd. v. U.O.I. -1992 (57) E.L.T. 201 (Bom). The Departmental Representatives, further, submitted that HDPE tape is an intermediate product of HDPE sacks and there is no difficulty in ascertaining as to how much duty on

HDPE tapes has been passed on to the buyers of sacks as the sacks are solely manufactured by the manufacturer out of the HDPE tapes, and accordingly reasoning given in the Solar Pesticides (P) Ltd. is not applicable to the facts of the present matter. They also mentioned that as per the decision of the Supreme court in Bombay Tyre International case 1983 (14) E.L.T. 1896, all expenses incurred to make the goods complete and marketable have to be included in the assessable value. Therefore, it is evident that the price of HDPE sacks is inclusive of the duty paid on HDPE tapes and accordingly the amount of duty paid on tapes is not refundable to the respondents as the incidence of duty has been passed on the buyers of sacks.

3. We have considered the submissions of the Revenue and perused the records. It has been held by the Bombay High Court in Solar Pesticides Pvt. Ltd. that "Undoubtedly, the import duty paid on Copper Scrap may become part of the cost of manufacture of Copper Oxycloride, but when Copper Oxycloride is sold in the market, it is difficult to ascertain how much of the original import duty on copper scrap is passed on to the buyer". This decision has been followed by this Tribunal in many cases holding that when the goods are captively consumed the principles of unjust enrichment in respect of duty paid on the goods captively consumed does not apply as it will not be possible for the customers of the goods to claim the refund of duty under Clause (e) of the proviso to Section 11B(2) of the Central Excise Act. Similar situation exists in the present matters and ratio of the Solar Pesticides case is squarely applicable to the facts of the present cases. We find, therefore, no reason to interfere with the impugned order and accordingly reject all the three appeals filed by the Revenue.